

**Article 9: Environmental Quality Ordinance****Division 2: Procedures for Implementation of CEQA and the State CEQA Guidelines**

*("Interim Guidelines and Procedures" added 11-14-1972  
by O-10952 N.S.; repealed 11-9-1977 by O-12203 N.S.)  
("Definitions" added 11-9-1977 by O-12203 N.S.)  
(Retitled "Procedures for Implementation of CEQA and  
the State CEQA Guidelines" 4-6-1992 by O-17753 N.S.)*

**§69.0201 Purpose**

The purpose of the procedures set forth in Article 9, Divisions 1 through 3 is to implement CEQA and the State CEQA Guidelines, and to provide the City of San Diego with objectives, criteria, and specific procedures consistent with CEQA and the State CEQA Guidelines for administering its responsibilities under CEQA, including the timely and orderly evaluation of projects and preparation of environmental documents. The procedures and provisions of this article are intended to supplement the State CEQA Guidelines and to provide additional guidelines for implementing CEQA and evaluating projects in the City.

*("Purpose" added 4-6-1992 by O-17753 N.S.)*

**§69.0202 Authority**

The procedures set forth in Article 9 are adopted by the City Council pursuant to Section 21082 of CEQA and Section 15022 of the State CEQA Guidelines.

*("Authority" added 4-6-1992 by O-17753 N.S.)*

**§69.0203 Implementation Procedures**

All City agencies, in cooperation with DEP, shall systematically review and evaluate the ordinances, plans, policies, standards, criteria, procedures and practices under which they conduct their activities that may affect the quality of the environment and shall make or propose such changes in their activities that will further the purpose, intent and policies of this Article. City agencies shall carry out their responsibilities for preparing and reviewing environmental documents within a reasonable period of time. The Deputy Director is authorized to issue administrative guidelines consistent with CEQA, CEQA Guidelines, current case law and City Council Policy to assist City staff, project applicants and the public in meeting and understanding the requirements of CEQA and this Article. Subject to City Council approval, the Deputy Director shall adopt procedures for resolving disputes on environmental document processing issues.

*("Implementation Procedures" added 4-6-1992 by O-17753 N.S.)*

#### **§69.0204 Powers and Duties of the Development and Environmental Planning Division**

The Director shall be responsible for conducting environmental reviews and making determinations in accordance with CEQA regarding the environmental significance of projects and the type of environmental documents required for all projects or activities that are subject to discretionary approval by the City proposed by private applicants, the City, or other public agencies. DEP shall also conduct those activities, prepare appropriate reports and perform such services as set forth in this Article, CEQA, and the State CEQA Guidelines. The requirements for the preparation of environmental documents should not cause undue delays in the processing of applications for permits or other entitlements for use.

DEP shall establish and maintain that degree of independence in the performance of its functions and duties as will assure the City Council, the City Manager, the Planning Commission and the people of the City of San Diego that the review and analysis of the environmental consequences of projects under its purview, whether beneficial or detrimental, are in accordance with CEQA, are independent and wholly objective and are not prepared for the purpose of either supporting or detracting from any project, plan or position, whether advanced by the City, the Planning Department, Development Services Department, any other governmental agency, a developer, a citizen or a group of citizens. DEP shall, in addition, work with and encourage project applicants to incorporate and effect all feasible environmental mitigation measures or project alternatives to minimize, if not preclude, adverse impacts to the environment from the project, consistent with CEQA.

*(Amended 7-25-1994 by O-18088 N.S.)*

#### **§69.0205 Development and Environmental Planning Division Preparation of Reports and Declarations**

After an application for a discretionary permit or action is determined to be complete, DEP shall conduct an initial study of the project to determine whether an environmental document will need to be prepared. DEP shall notify the applicant in accordance with Section 15060 of the CEQA Guidelines of the scope of the environmental document and the additional information required. The time limits set forth in Section 21151.5 of CEQA for preparation of environmental impact reports and negative declarations are hereby adopted and established. The time limits for document preparation and review shall be coordinated with the provisions of the Permit Streamlining Act, Government Code section 65920, et. seq., except that time limits may be suspended as provided in Section 15109 of the Guidelines.

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Any environmental impact report or negative declaration prepared pursuant to the requirements of this Article shall be prepared directly by, under contract to, or under the supervision of DEP. The City Manager or Development Services Director is authorized to retain consultants, when appropriate, to implement the provisions of this section and expend funds collected pursuant to Section 69.0206 of this Code for such purposes. DEP may choose one of the following arrangements, or a combination thereof, for preparing a draft environmental report:

- (a) Preparing the draft environmental report with its own staff.
- (b) Contracting with another entity, public or private, to prepare the draft environmental report.
- (c) Executing a three-party agreement or memorandum of understanding, as appropriate, with the applicant and an independent environmental consultant to govern the preparation of a draft environmental report through the means of an independent contractor.
- (d) Causing a draft environmental report to be prepared by an environmental consultant retained by the applicant, based on a scope of issues letter prepared by DEP. Reports prepared in this manner shall be subject to the independent review and analysis set forth in Section 69.0204 and shall not be released for public review until DEP staff determines they are adequate.

DEP is responsible for implementation of the three-party agreement or memorandum of understanding for preparation of environmental reports, and ensuring that only qualified environmental consultants prepare such reports.

This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information to DEP. Such information may be submitted in any format and may be included in whole or in part in any such report or declaration.

An environmental report prepared pursuant to Section 69.0205 shall reflect the independent judgment and evaluation of DEP as to its adequacy and objectivity. Prior to the distribution of the draft environmental report for public review, the Deputy Director shall ensure that the draft report, to the maximum extent possible, incorporates the latest pertinent technical or scientific information and is factually accurate and consistent.

*(Amended 7-25-1994 by O-18088 N.S.)*

**§69.0206 Fees From Party Proposing Project**

DEP shall charge a reasonable fee and collect a deposit from any party proposing a project subject to the provisions of this Article in order to fully recover all reasonable costs incurred by the City in preparing and supervising an environmental impact report, negative declaration or mitigation monitoring program for each project. The Development Services Director shall prepare and submit to the Council an appropriate fee schedule. The schedule shall become effective on its approval by Council resolution, and be published in the composite rate book by the City Clerk.

*(Amended 7-25-1994 by O-18088 N.S.)*

**§69.0207 Noticing Requirements**

Notice of availability of environmental reports for public review and comment shall be given by DEP using the following procedures:

- (a) The notice of availability shall be published one time in the officially designated City newspaper, and shall be sent by DEP to all organizations and individuals who have previously requested such notice and to the public library serving the area involved. A copy of the notice of availability shall also be sent to the officially recognized community planning group representing the planning area involved.
- (b) A copy of the notice of availability may also be sent by DEP to a community newspaper within the recognized community planning area.

*("Notice Requirements" added 4-6-1992 by O-17753 N.S.)*

**§69.0208 Public Review and Comment**

Other public agencies and members of the public shall have the following time periods to review and comment on draft environmental impact reports and supplements, negative declarations and addenda:

- (a) Negative Declarations
  - (1) When a negative declaration is not required to be submitted to the State Clearinghouse for review by state agencies, then the public review period shall be a minimum of 21 calendar days.

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- (2) When a negative declaration is required to be submitted to the State Clearinghouse for review by state agencies, the public review period shall be a minimum of 30 calendar days unless a shorter period is approved by the State Clearinghouse.
- (b) Draft Environmental Impact Reports and Supplements
- (1) When a draft environmental impact report or a supplement is not required to be submitted to the State Clearinghouse for review by state agencies, then the public review period shall be a minimum of 30 calendar days.
- (2) When a draft environmental impact report or a supplement is required to be submitted to the State Clearinghouse for review by state agencies, then the public review period shall be a minimum of 45 calendar days, unless a shorter period is approved by the State Clearinghouse.
- (c) Addenda
- All addenda for environmental documents certified more than three years previously shall be distributed for public review for fourteen (14) calendar days along with the previously certified environmental impact report or negative declaration pursuant to section 69.0211; provided, however, that this review period for the addenda shall not extend the time for action beyond that required under law, and provided further that the failure to allow review of addenda or allow sufficient time to review addenda shall not invalidate any discretionary agency approval based upon an addendum under review.
- (d) Additional Review Time
- An additional review period not to exceed 14 calendar days may be allowed by the Deputy Director for good cause shown upon request of the affected officially recognized community planning group; provided, however, that the additional time for review shall not extend the time for action beyond that required under law, nor shall the failure to allow additional time for review invalidate any discretionary agency approval based upon the document for which the additional review time was requested. The Deputy Director shall adopt guidelines subject to City Council approval under which "good cause" may be shown.

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- (e) Recertification and Reissuance of Previous Environmental Report.

When a previously certified environmental impact report or negative declaration, including any supplement or addendum, adequately covers additional discretionary actions on the same project and accurately analyzes the environmental impacts, and the circumstances surrounding the project are essentially the same, then that document may be reissued for use by the decisionmaking body under an explanatory cover letter certifying that none of the conditions specified in Section 21166 of the Act apply. The decisionmaker shall certify or recertify as necessary that the appropriate environmental documents have been considered prior to discretionary actions on the project. Public review may be required pursuant to Section 15153 of the CEQA Guidelines when the document is to be used in connection with the discretionary approval of another project.

*(Amended 11-29-1993 by O-18012 N.S.)*

#### **§69.0209 Responses to Comments**

Written responses shall be prepared by DEP or under the supervision of DEP to letters of comment received during the public review period for all environmental impact reports, negative declarations, supplements, and addenda and be attached to the environmental document.

*("Responses to Comments" added 4-6-1992 by O-17753 N.S.)*

#### **§69.0210 Findings and Statement of Overriding Considerations**

The following procedures are established for the preparation of Findings and the Statement of Overriding Considerations pursuant to Sections 15091 and 15093, respectively, of the State CEQA Guidelines, when significant impacts are identified in a Draft Environmental Impact Report (DEIR):

- (a) Draft candidate findings shall be submitted to DEP prior to the distribution of the DEIR for public review. Draft candidate findings are not subject to public review at this time.

If the draft candidate findings state that mitigation measures and project alternatives are not feasible for physical, social or other grounds, then the record must demonstrate justification for such conclusions.

If the draft candidate findings state specifically that mitigation measures and project alternatives identified in the draft environmental impact report are not

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economically feasible, then the record shall demonstrate the economic infeasibility of the mitigation measures to support the findings. In making the findings, DEP shall not require disclosure of material that meets the definition of and would be classified by the applicant as a "trade secret" within the meaning of Public Resources Code Section 21160. If, however, the applicant elects to furnish a "trade secret," then the applicant may furnish the "trade secret" to DEP, and DEP shall accord the protection to the "trade secret" required by law.

- (b) The City department or division which is responsible for making a recommendation on the project to the decisionmaker shall, in conjunction with DEP, review the supporting documentation and information to determine whether or not substantial evidence exists to support the draft candidate findings.

- (1) If, in the opinion of the recommending department or division and DEP, the documentation is insufficient to support the draft candidate findings, and the applicant does not provide additional requested necessary information, the Deputy Director shall advise the decisionmaker that the record is considered inadequate and that it would not be possible to recommend approval of the project as proposed.

The applicant is thereafter responsible for providing to the decisionmaker any additional oral information or written documentation for the record at the time of the public hearing or other discretionary action to support making the findings and statement of overriding considerations necessary for approval of the proposed project.

- (2) If the recommending department or division and DEP determine the information and documentation is sufficient to support the draft candidate findings and any associated proposed statement of overriding considerations, then the recommending department or division in conjunction with DEP shall prepare the findings and statement of overriding considerations for the decisionmaker. Any additional information and documentation provided by the applicant at the public hearing shall be included as an attachment to the record prepared for the decision.

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- (c) The draft candidate findings and proposed statement of overriding considerations shall be completed and be available with copies of the final environmental impact report 14 calendar days prior to the first public hearing or discretionary action on the project.
- (d) If, prior to making a decision, the decisionmaker determines that substantive additional information has been presented at the public hearing requiring further review, then the decisionmaker may refer such information to DEP for analysis, provided such referral does not adversely affect any time limitations imposed by law.
- (e) The adopted findings and the statement of overriding considerations shall be based on the entire record of proceedings and be finalized by DEP in consultation with the applicant and the City Clerk and the recommending department or division when appropriate.

*("Findings and Statement of Overriding Considerations" added 4-6-1992 by O-17753 N.S.)*

#### **§69.0211 Addenda to Environmental Reports**

DEP shall be responsible for determining whether to prepare an addendum to an environmental impact report or negative declaration pursuant to Section 15164 of the State CEQA Guidelines. These may be prepared provided no substantial changes have occurred pursuant to CEQA Guidelines section 15162 which require an environmental document, addenda for environmental documents certified more than three (3) years previously shall be distributed by DEP for public review for a fourteen (14) calendar day period, along with the previously certified Environmental Impact Report or negative declaration. DEP shall evaluate written comments on draft addenda in accordance with Section 15088 of the State CEQA Guidelines and incorporate the comments and responses into the final addenda and record. Failure by DEP to provide all or a portion of the review period shall not preclude discretionary action on the project when necessary to avoid conflict with time limits imposed by law.

*(Amended 11-29-1993 by O-18012 N.S.)*

#### **§69.0212 Final Report Distribution and Review**

DEP shall make all final environmental reports available to the public and decision makers at least fourteen (14) calendar days prior to the first public hearing or discretionary action on the project. DEP shall also mail copies of final environmental reports to the public, including but not limited to community planning groups or others, as appropriate, no later than fourteen (14) calendar days prior to the first



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public hearing or discretionary action. Pursuant to Public Resources Code section 21092.5, DEP shall provide a final environmental impact report to a public agency that commented on the draft document ten (10) days prior to certification of the Document. No comments shall be solicited and no written responses to comments on final environmental reports shall be prepared. The intent of this review period is to provide other public agencies, the public, and the decisionmakers the opportunity to review the final report prior to the first public hearing or discretionary action on the project. Notwithstanding, failure to provide this fourteen (14) calendar day review period shall not be treated as a procedural defect and shall not preclude discretionary action on the project when necessary to avoid conflict with time limits imposed by law. (*Amended 11-29-1993 by O-18012 N.S.*)

### **§69.0213 Discretionary Extensions of Time**

All discretionary extensions of time (DEOTs) to previously approved discretionary actions shall be subject to environmental review, and shall not be considered as on-going projects. The DEOT shall be evaluated pursuant to Sections 15162 through 15164 of the State CEQA Guidelines to determine the appropriate environmental report, if any, necessary to address the DEOT. All administrative extensions of time for final subdivision maps authorized pursuant to Government Code Section 66452.6(a) (Subdivision Map Act) are ministerial actions and are not subject to additional environmental review.

(*"Discretionary Extensions of Time" added 4-6-1992 by O-17753 N.S.*)

### **§69.0214 Demolition Permits**

- (a) Except as otherwise provided in Section 69.0214.B or the Act, an application for a demolition permit shall be subject to environmental review where the demolition is an integral part of a pending application for a development project requiring discretionary approval, or where such demolition itself is regulated under a discretionary approval process such as the Hillside Review Overlay Zone (Sec. 101.0454) or Historical Site review (Sec. 26.0205). No demolition permit subject to environmental review shall be issued until the environmental review process is complete and the potential impacts associated with the demolition permit have been considered.
- (b) Section 69.0214.A shall not apply to: (1) demolitions conducted pursuant to judicial or administrative abatements; (2) emergency demolitions necessary to protect public health and safety; or (3) demolitions conducted pursuant to ministerial demolition permits.

(*"Demolition Permits" added 4-6-1992 by O-17753 N.S.*)

**§69.0215 Reporting and Monitoring Programs**

When the conditions of project approval require mitigation and monitoring, the City Manager and the Development Services Director are responsible for promulgating mitigation and monitoring standards and guidelines for public and private projects consistent with the requirements of Section 21081.6 of the Act. Appropriate surety instruments or bonds may be required of private project applicants to ensure the long term performance or implementation of required mitigation measures or programs. The City is authorized to recover its costs to offset the salary, overhead and expenses for City personnel and programs to monitor qualifying projects.

*(Amended 7-25-1994 by O-18088 N.S.)*

**§69.0216 Habitat Acquisition**

When a condition of project approval requires habitat acquisition or preservation of a habitat as a feasible mitigation measure for offsetting or avoiding significant effects on the environment caused by the project, the City Development Services Director in conjunction with the City Manager is hereby authorized to enter into agreements with other public agencies or private non-profit conservancies or foundations for the acquisition and maintenance of such habitat, when and if appropriate. When the affected habitat area is small and isolated, and it has been determined that the applicant cannot feasibly provide like-kind replacement, the applicant may instead pay monetary compensation into a fund administered by the City or other agency to be used for habitat acquisition or preservation of another habitat.

*(Amended 7-25-1994 by O-18088 N.S.)*

**§69.0217 Erroneous Information in Environmental Impact Reports**

If, following the certification of an Environmental Impact Report (EIR) in connection with a project approval, it appears that the EIR contains erroneous information, and that this information was both material to and had a substantial effect on the findings and conclusions of the EIR and any related statement of overriding considerations, DEP shall determine the effect and any need for corrective action. If DEP finds correction is necessary and cannot be made pursuant to the provisions of the Act and Guidelines, then DEP shall make recommendations for corrective action to the permit issuing authority. The issuing authority may then schedule a hearing in accordance with the procedures used for the original issuance of the permit to first determine whether or not the permit issued under that certification may legally be revoked or modified, and second, whether it should then be revoked or modified to take into account the effect and materiality of the correct information. Section 69.0217 shall not apply if the information originally submitted was considered valid at the time of

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certification of the EIR but later methodology established that the information was no longer valid.

*("Erroneous Information in Environmental Impact Reports" added 4-6-1992 by O-17753 N.S.)*

**§69.0218 Enforcement**

Except as otherwise provided in the Municipal Code or by other law, it is unlawful for any project applicant or permittee to do any of the following:

- (a) to fail to perform a material condition related to the development of a project which was made a condition of such approval or permit issued;
- (b) to do any act without the required permit; or,
- (c) to fail to timely comply with, or to acquiesce in such failure to timely perform, any condition or preliminary act required by the Development Services Director, as it materially and substantially relates to the development of a project.

Violations may be enforced by criminal or civil judicial action, or both, or in combination with any of the administrative remedies enumerated in Chapter 1 of this Code.

*(Amended 7-25-1994 by O-18088 N.S.)*

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